IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

RSA.No. 162 of 2004()

AS.6/1998 of I ADDL. DISTRICT COURT, PALAKKAD
OS.72/1995 of MUNSIFF COURT, CHITTUR

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: APPELLANTS:SUPPLEMENTAL RESPONDENTS 2,3 & 4/LRs.OF THE DECEASED SUPPLEMENTAL SECOND PLAINTIFF

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1. RAJAMMAL, W/O. LATE ARUMUGHAN PILLAI, PITTIPEEDIKA, KOLOD, KODUVAYUR AMSOM, PALAKKAD, ALATHUR TALUK.

2. BHAGYAM D/O. LATE ARUMUGAN PILLAI, PITTIPEEDIKA, KOLOD, KODUVAYUR AMSOM, PALAKKAD, ALATHUR TALUK.

3. MANIKANDAN, S/O. LATE ARUMUGHAN PILLAI PITTIPEEDIAKA, KOLOD, KODUVAYUR AMSOM, PALAKKAD, ALATHUR TALUK.

BY ADV. SRI.P.R.VENKETESH
SMT.ASHA CHACKO

RESPONDENTS: APPELLANT/DEFENDANTS:

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1. BHARATHIDAS, S/O. NARAYANADAS, 50 HOUSE COLONY, PALARAJAPALAYAM, TRIPUR.

2. CHANDRIKA W/O. BHARATHIDAS, 50 HOUSE COLONY, PALARAJAPALAYAM, TIRUPUR.

BY ADV. SRI.T.KRISHNAN UNNI

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 162 OF 2004

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Dated this the 25th day of September, 2007

JUDGMENT

Legal heirs of plaintiffs in O.S.72/1995 on the file of Munsiff Court, Chittur are the appellants. Defendants are the respondents. Plaintiffs instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint schedule property belongs to first plaintiff as the legal heir of deceased Daivana and second respondent is the daughter of second plaintiff Arumughampillai and first respondent is her husband and after the death of Daivana, first plaintiff has been in exclusive possession of the property and respondents are attempting to trespass into the property and they have no right to do so and therefore they are to be restrained by a permanent prohibitory injunction. Respondents in the written statement contended that first plaintiff is not the legal heir and second plaintiff will not get any

title to the property and second respondent is not the daughter of the second plaintiff, who is the daughter of Daivana and according to her knowledge and belief she was brought up Daivana and her husband Govindaraja Pillai as their daughter and on the death of Daivana his right devolved on second respondent as the legal heir and plaintiffs are not entitled to the decree for injunction sought for.

2. Learned Munsiff on the evidence of Pws.1 and 2 and Exts.A1 to A5, DW1, and Exts.B1 to B6 granted a decree for a permanent prohibitory injunction holding that on the death of Daivana her right devolved on first plaintiff and on the death of first plaintiff, it devolved on second plaintiff and second respondent is not the daughter of Daivana and therefore respondents have no right over the property. Respondents challenged the decree and judgment before District Court, Palakkad in A.S.6/1998. Learned Additional District Judge on reappreciation of evidence found that Exts.B4 and B5 the admission register of second respondent show that Govindaraja pillai is the father and in

Ext.A7 birth certificate second respondent is shown as the daughter born to second plaintiff and as Ext.B4 is disputed it cannot be relied on and the evidence establish that second defendant was brought up as the daughter of Daivana and therefore on the death of Daivana his right will not devolve on first plaintiff alone. Learned District Judge also found that even if the second defendant is not the daughter of Daivana, evidence establish that she was the adopted daughter. Learned District Judge also found that from the evidence, it is clear that second respondent is in possession of the property and therefore appellants are not entitled to the decree sought ofr. The appeal was allowed and the decree was set aside and the suit was dismissed. It is challenged in the second appeal.

3. Learned counsel appearing for appellants was heard.

4. The argument of learned counsel appearing for appellants is that there is no case for the respondents in the written statement that second

defendant is the adopted daughter of Daivana and instead the only case was that she was brought up as the daughter of Daivana and on the evidence first appellate court was not justified in entering a finding that second defendant is the adopted daughter of Daivana without proper pleading and evidence. It was argued that evidence establish that appellants have been in possession of the property and therefore a decree for injunction should have been granted.

5. On hearing learned counsel appearing for appellants, I do not find any substantial question of law involved in the appeal.

6. It is true that being a suit for injunction, question of title as such need not be decided in the suit. What is claimed by plaintiffs was that they are in possession of the property on the death of Daivana the original owner. What is contended by second respondent in the written statement was that she was brought up as the daughter of Daivana. The question whether second respondent is the daughter or adopted daughter is

not to be decided in the suit. Eventhough it was decided by courts below, it can only be for the purpose of deciding the question of possession, as the suit is only one for injunction simpliciter. In such circumstance, it is not necessary to decide the question whether second respondent is the daughter or adopted daughter of Daivana in this suit. That question is left opened to be decided in an appropriate suit. From the evidence, it cannot be said that appellants established their possession of the plaint schedule property. In such circumstance, they are not entitled to the decree sought for.

Appeal is dismissed. It is made clear that the findings of the courts below on the question of status of second respondent will not bar the appellants from instituting a proper suit for declaration of title.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006